No. 85-527

Supreme Court, U.S.
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OCT 28 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

FAITH CENTER, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Respondent.

WESCOTT CHRISTIAN CENTER,

Intervenor-
Respondent.

BRIEF OF INTERVENOR-RESPONDENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

1. Whether the religion clauses of the First Amendment require the Federal Communications Commission to afford Faith Center, Inc., a religious broadcaster, a hearing on its claims that responding to discovery requests would violate the tenets of the church and the religious beliefs of its adherents, prior to imposing sanctions for Faith Center's refusal to respond.

2. Whether Faith Center, Inc., a religious broadcaster, could properly refuse to comply with discovery demands on the ground that they were overbroad and thus threatened the free exercise of its religious beliefs, and the beliefs of its members.

PARTIES INVOLVED

The parties involved in this petition are Faith Center, Inc., petitioner, and the Federal Communications Commission, respondent. Petitioner Faith Center, Inc. has no parent companies or subsidiaries, within the meaning of Sup. Ct. R. 28.1. Wescott Christian Center and Full Gospel Fellowship of Churches and Ministers International, of both of which Dr. w. euGene Scott is president, may be affiliates, within the meaning of the rule.

The following individuals and corporations were parties in the court below and are respondents in this Court pursuant to Sup. Ct. R. 19.6: West Coast United Broadcasting Company, Wescott Christian Center, Dr. w. euGene Scott, Lucille E. Johnston, and New Inspiration Broadcasting Co., Inc.*

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* As explained more fully below, this

petition seeks review of two cases: District of Columbia Circuit Nos. 84-1085 and 83-2295. West Coast United Broadcasting Company was an intervenor in case No. 84-1085. Wescott Christian Center, Dr. w. euGene Scott, Lucille E. Johnston, and New Inspiration Broadcasting Co., Inc. were intervenors in case No. 83-2295.

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Joining with the petitioner, Faith Center, Inc., Intervenor-Respondent, Wescott

Christian Center respectfully prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the District of Columbia Circuit entered in these proceedings on May 9, 1985.

OPINIONS BELOW

The per curiam order and judgment of the court of appeals in its case No. 84-1085 ("the San Francisco proceeding") is unreported and is set forth in Appendix A, pp. 1a-2a of Faith Center's Petition. The per curiam order and judgment of the court of appeals in its Case No. 83-2295 ("the Los Angeles proceeding") is unreported and is set forth in Appendix B, pp 3a-4a of Faith Center's Petition. The order of the Federal Communications Commission in the San Francisco proceeding is unreported and appears in Appendix C, pp 5a-6a of Faith Center's Petition. The order of the Federal Communications Commission in the Los

Angeles proceeding is unreported and appears in Appendix D, pp. 7a-14a of Faith Center's Petition. The Memorandum Opinion and Order of the Review Board in the San Francisco proceeding is reported at 94 F.C.C. 2d 756 and appears in Appendix E, pp. 15a-21a of Faith Center's Petition. The Memorandum Opinion and Order of the Review Board in the Los Angeles proceeding is reported at 92 F.C.C. 2d 1255 and appears in Appendix F, pp. 22a-32a of Faith Center's Petition. The Memorandum Opinion and Order of the Administrative Law Judge in the San Francisco proceeding is unreported and appears in Appendix G, pp. 33a-37a of Faith Center's Petition. The Memorandum Opinion and Order of the Administrative Law Judge in the Los Angeles Proceeding is unreported and appears in Appendix H, pp. 38a-51a of Faith Center's Petition.

JURISDICTION

The judgments below in both the San Francisco and the Los Angeles proceedings were entered on May 9, 1985. (App. A and B, pp 1a-3a of Faith Center's Petition.) A timely petition for rehearing in the San Francisco proceeding was denied on July 8, 1985. (App. I, p. 52a of Faith Center's Petition) A timely petition for rehearing and suggestion for rehearing en banc in the Los Angeles proceeding was denied on July 2, 1985. (App. J, p. 53a of Faith Center's Petition) The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). Intervenor-Respondent Wescott Christian Center appears pursuant to Sup. Ct. R. 19.6.

CONSTITUTIONAL PROVISION INVOLVED

The religion clauses of the First Amendment provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."

U.S. Const. amend. I.

STATEMENT

In this case the Federal Communications Commission ("FCC" or "Commission") dismissed a church's application for renewal of a radio broadcast license and a television broadcast license, the reason given being, in the Commission's words, the Church's "failure to prosecute" the applications. (App. F, p. 31a of Faith Center's Petition) The failure to prosecute occurred when the church, Faith Center, Inc., refused to comply with broad and sweeping discovery orders which it believes contravene the First Amendment rights of the church and its adherents.

Relationship Between Petitioner, Faith Center, Inc. and Intervenor-Respondent.

Intervenor-Respondent, Wescott Christian Center, a California non-profit church

corporation, (hereafter, "Wescott"), is not now, nor has it ever been a licensee of the Federal Communications Commission (hereafter, FCC.) It has intervened in the proceedings below to protect its own property rights, and the constitutional rights of its sister church, Faith Center, which is a separate and distinct California non-profit church corporation.

Wescott was incorporated on July 19, 1963, establishing its worship center and its principle offices in Oroville, California. From its corporate beginning, Dr. W. Eugene Scott has served as an Associate Pastor to his father, W. T. Scott, Senior Pastor of Wescott's Congregation.

During the next decade of its existence, Wescott expanded its Ministry to the entire world. Its expansion was based on the growing reputation of Dr. Scott as a Christian teacher and businessman. Sister churches

from Anaheim, California to Australia called upon him to preach and to consult with their leaders on both temporal and spiritual problems. Under Dr. Scott's leadership, Wescott grew and prospered.

In 1975, Dr. Scott was asked by the Board of a sister church, Petitioner, Faith Center, to assist in solving a seemingly insoluable problem. Because of the illness of Faith Center's then Pastor, Rev. R. Schoch, and exceptionally bad management by the officers who acted for him, Faith Center found itself with four million dollars of current liabilities, an inventory of obsolete broadcasting equipment and liquid assets of less than $20,000. The advice sought from Dr. Scott was on how to handle the Church's bankruptcy.

Dr. Scott was also asked to preach to the Congregation, but his message was not on bankruptcy but on Faith, acting in Faith;

living in Faith. The response to the sermon was an invitation to become Pastor of Faith Center.

Dr. Scott had little desire to exchange the Pastorate of a successful church for that of a failing one, and the request was initially refused. After a great deal of thought and prayer, the offer was accepted, but with conditions. One condition was to assure the fiscal integrity of Wescott. Faith Center proposed to take from Wescott its main asset: the services and skill of Dr. Scott. It was therefore agreed that while Wescott would assist Faith Center in its crisis, all videotapes of Dr. Scott's teachings were to be and remain Wescott's property. The condition was accepted, and Faith Center has at no time ever owned or had control over videotapes of any of Dr. Scott's programs.

As set forth at length in the Petition of Faith Center, after an unverified complaint by one fired ex-cameraman, the FCC began its prosecution of that FCC licensee. Faith Center cooperated with the FCC to clear the charges providing invoices, receipts and affidavits refuting the charges. For religious reasons, Faith Center would not, however, accede to the demand for the delivery of names of donors to FCC investigators. For common sense reasons, Faith Center could not deliver to the FCC what it did not own: the videotapes of Dr. Scott's teachings. For these two refusals, one based on the strongly held belief that donations were to be given in secret (Matthew 6:1-4), and one based on the Commandment, "Thou shall not steal," the FCC will, without intervention of this Court, strip Faith Center of its broadcast licenses.

From the time of its first demand, the

FCC was placed on notice that the tapes in question were the property of Wescott and could not be delivered without the permission of Wescott's Board. That Board, noting that its investment in the tape stock, exclusive of the value of Dr. Scott's teachings recorded thereon, was in excess of $700,000, was somewhat reluctant to deliver such a large part of its assets over to a governmental agency with no guarantee of return or even safekeeping. This reluctance was augmented by the fact that the investigators admitted that they had not bothered to review the twenty reels of 2" video tape owned by Faith Center and delivered to them on the first day of the investigation. The reason for this was lack of interest and any equipment upon which to play 2" tapes. In spite of this, Wescott stated to the FCC that it would abide by any subpoena which the FCC might issue under Title 47 U.S.C.

§1.222. The FCC refused to issue the subpoena maintaining, as it has maintained all along, that because Dr. Scott was President of both organizations, it was bad faith to refuse to turn over the property of Wescott for the benefit of Faith Center.

It is a settled matter of law that corporations are separate entities and the sharing of officers or directors does not destroy the corporate entity. Penwalt v. Plough, Inc., 85 F. R. D. 257 (D.C. Del. 1979). For the FCC to attempt to force Faith Center to convert property it did not own on pain of loss of license is only one of a train of abuses by this agency.

CONCLUSION

Wescott was made a part of this license proceeding even though Wescott is not a licensee, its true corporate nature and its religious purposes were distorted and assassinated, and its rights were violated

by an abusive attempt to treat this valid church organization as though it did not have a real and substantial existence, all of which said treatment was done with no findings of fact.' By such activities, Faith was unjustly punished because of actions performed by Wescott, a non-licensee, and Wescott's rights under the constitution and the laws of the State of California were ignored by the actions of the FCC in its unlimited extension of jurisdiction over this non-licensee church.

Respectfully submitted,

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October 23, 1985